FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No. 483/2005

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : Smt. V. A. Naik, J.
DATED : March 22, 2007.

Heard.

The appellant is the original plaintiff. A suit was filed by the plaintiff for declaration that the defendant got a sale deed dated 30/5/1988 executed from her fraudulently and by exercising undue influence, and that the defendant took forcible possession of the suit property on 26/10/1993. The plaintiff, therefore, sought the relief of possession of the suit property. The defendant denied the claim of the plaintiff and pleaded that the plaintiff had executed a sale deed in respect of the suit property on 30/5/1988 and the document dated 30/5/1988 was a genuine one.

The trial Court framed the necessary issues and held that the plaintiff had proved that the defendant had got the sale deed dated 30/5/1988 executed from the plaintiff by exercising undue influence and by practicing fraud. The trial Court further held that the plaintiff was forcibly dispossessed from the property and the plaintiff was

entitled for grant of relief of declaration and possession. The trial Court cancelled the sale deed dated 30/5/1988. The trial Court did not rely on the evidence of the attesting witness as well as the scribe examined on behalf of the defendant for proving the genuineness of the sale deed dated 30/5/1988, solely on the ground that the original sale deed was not produced before the Court either by the plaintiff or by the defendant.

On an application made by the defendant before the appellate Court under Order XLI Rule 27 of C.P.C., the appellate Court permitted the defendant to produce additional evidence on record in the form of sale deed dated 30/5/1988. Since the trial Court had discarded the testimony of the attesting witness and the scribe of the sale deed only because the original sale deed was not produced, the appellate Court, by allowing the production of the primary evidence, considered the document as well as the evidence tendered by the attesting witness and the scribe thereto. The appellate Court independently scrutinized the evidence of the plaintiff and the defendant, and reversed the findings recorded by the trial Court. The appellate Court held that the sale deed was not executed by the plaintiff in view of the fraud and undue influence exercised by the defendant. The appellate Court further held that the plaintiff was not forcibly dispossessed by the defendant. In view of

the aforesaid findings, the appellate Court held that the sale deed dated 30/5/1988 was not liable to be cancelled. On re-appreciation of the evidence, the appellate Court held that the defendant had proved that the consideration for the sale transaction passed to the defendant from the plaintiff. In view of the aforesaid findings, the appeal filed by the defendant was allowed by the appellate Court.

The findings recorded by the appellate Court are pure findings of facts and do not give rise to a substantial question of law. There was no necessity to remand the matter to the trial Court for adducing additional oral evidence on the production of the original sale deed before the appellate Court as the attesting witnesses and the scribe to the document dated 30/5/1988 were already examined on behalf of the defendant and the trial Court had discarded their testimony solely on the ground that the original sale deed was not produced by either of the parties before the trial Court.

Since no substantial question of law arises for consideration in this second appeal, second appeal is dismissed with no order as to costs.

JUDGE

RMP